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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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MAY 24 1996

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g))
of the Communications Act of 1934,)
as amended)

CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF THE CASUAL CALLING COALITION

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at 11

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EXECUTIVE SUMMARY

The Casual Calling Coalition opposes the Commission's tentative conclusion to forbear from the tariff filing requirement. The Coalition consists of interexchange carriers that provide "casual calling" services to consumers---that is, interexchange services that can be selected by a consumer on an impermanent basis without presubscribing or otherwise establishing a prior relationship with the carrier. Because these services are offered on an informal basis, tariffs provide consumers with reliable information regarding service offerings and rates. Most importantly, tariffs provide a cost-efficient method of establishing the carrier's responsibility to the customer.

The Coalition respectfully submits that the statutory criteria for forbearance are not met in the current interstate interexchange environment. Should the Commission determine otherwise, the Coalition proposes that the Commission adhere to the request of numerous commenters in this proceeding and implement a policy of permissive tariffing. As illustrated by these comments, tariffs provide carriers, consumers and the Commission with pertinent information regarding rates, service offerings, and the overall status of the industry. As a result, consumers enjoy greater vendor selection, lower prices and state-of-the-art service that would not otherwise be available.

The Coalition also reiterates its belief that the Commission should either exempt the casual calling service providers from the tariffing decision altogether or, at the very least, implement permissive tariffing whereby casual calling service providers may file tariffs with the Commission on a voluntary basis. Finally, the Coalition urges the Commission to consider alternative approaches suggested by several commenting parties (*i.e.*, allow permissive tariffing

for smaller IXC's while maintaining the current tariff requirement for large IXC's) to eliminate concerns regarding price collusion and abuse of the filed rate doctrine.

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| as amended |) | |

REPLY COMMENTS OF THE CASUAL CALLING COALITION

The Casual Calling Coalition ("Coalition"), pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") rules, submits the following reply comments in response to the Commission's Notice of Proposed Rulemaking regarding the interexchange tariff forbearance.¹

The Coalition appreciates the Commission's continuing efforts to eliminate unnecessary regulations that impede competition in the domestic long distance market. While the Coalition recognizes that some regulations may effectively reduce competition, there is concern that, in this particular instance, the Commission is overlooking the enormous benefits that tariff filings offer to both consumers and carriers. As specified in numerous comments submitted in this proceeding, tariff filings are essential if the Commission is to realize its objective of promoting competition in the long distance market. In particular, tariffs are needed to ensure informed decisionmaking by consumers. Moreover, tariffs help to eliminate the transaction costs

¹ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61 (released March 25, 1996) ("NPRM").

associated with establishing a contractual relationship between carriers and consumers. Finally, tariffs provide the Commission with information necessary to properly administer the Section 208 complaint process and to monitor the industry on an informal basis. Accordingly, the Coalition urges the Commission, as do many of the comments submitted in this proceeding, to reevaluate its tentative conclusion to forbear from the tariff filing requirement for non-dominant interstate interexchange carriers (“IXCs”) and maintain the current filing system.

I. FORBEARANCE FROM THE TARIFF REQUIREMENT IS NOT CONSISTENT WITH THE PUBLIC INTEREST

As an initial matter, the Coalition submits that no argument presented in the opening comments of this proceeding should dissuade the Commission from finding that the statutory criteria for forbearance are not met in the current interstate interexchange environment. In fact, as noted by the Telecommunications Resellers Association (“TRA”) and General Communications,² the public benefits derived from tariffs clearly support a Commission finding in favor of retaining the current tariff regime. Tariffs provide the most efficient means of disseminating information regarding service offerings and rates to the public as a whole. Without this data, consumers are less able to obtain the information needed to make informed decisions when selecting their long distance carrier, thereby reducing competition in the industry overall.

This view is consistent with the arguments set forth by the vast majority of commenters

² See Comments of Telecommunications Resellers Association at 5, 16-17; General Communications, Inc. at 2-5.

who encourage the Commission to adopt a policy of permissive tariffing.³ As a general matter, proponents of permissive tariffing agree with the Commission's tentative conclusion that the current mandatory tariff rules are no longer necessary for nondominant IXCs. Many, however, challenge the Commission's authority to eliminate tariff filings altogether under the public interest standard of Section 10(a) of the Communications Act of 1934 ("Act").⁴ According to these commenters, tariffs are vital to the success of the domestic long distance market and provide numerous benefits to consumers including greater vendor selection, increased consumer awareness, lower prices, and higher quality service. The Coalition finds this position incongruous since the statutory criteria for any type of forbearance under the Act also requires a finding that forbearance is consistent with the public interest. It seems logical that if complete elimination of the tariff filing requirement fails to meet the public interest standard under the Act, then those same interests would negate a finding by the Commission that the Act permits any type of forbearance.

³ See, e.g., Comments of Business Telecom. Inc. at 7; LCI International Corporation at 2-5; Pacific Telesis Group at 2-9; Sprint at 2-7.

⁴ Under the Section 10, the Commission is authorized to forbear from the tariff filing requirement, or any other regulation, if the following criteria are met: (1) the regulation is unnecessary to ensure that the rates, practices, classifications, or regulations enforced by telecommunications carriers are just and reasonable and are not justly or unreasonably discriminatory; (2) enforcement of the requirement is not necessary for the protection of consumers; and (3) forbearance from applying such provisions is consistent with the public interest. Additionally, the Telecom statute requires the Commission to consider whether forbearance will promote a competitive marketplace, including the extent to which forbearance will enhance competition among telecommunications providers.

II. MANDATORY FORBEARANCE IS NOT PRESCRIBED BY THE ACT

A. *The Act Permits Permissive Tariffing*

As discussed in the preceding section, numerous commenters challenge the Commission's tentative conclusion that the Act requires mandatory forbearance from the tariff filing requirement. These commenters not only confirm that a plain reading of the Act does not require mandatory detariffing but that the current environment does not support the Commission's conclusion that mandatory detariffing is in the public interest. As such, should the Commission find that forbearance is required under the Act, the Coalition urges the Commission to adopt only a voluntary forbearance policy and permit carriers to file tariffs if they choose.

As the Coalition argued in its initial comments, the forbearance provision of the Act indicates that Congress intended to provide the Commission with the authority to refrain from enforcing regulations under limited circumstances.⁵ The Act only authorizes the Commission to forbear from unnecessary regulations. It does not license complete elimination of the existing tariff requirement. For example, Section 10(a)(1) authorizes the Commission to “forbear *from applying*” a regulation or statutory provision, “if enforcement of such regulation or provision is not necessary” to achieve the statutory goals. (Emphasis added.) This and other provisions authorize the Commission to excuse carriers from compliance with the mandatory provisions of the Act or its regulations. The forbearance policy, however, does not authorize the adoption of new binding obligations, such as a mandatory prohibition against tariff filings. Most notably,

⁵ See Comments of the Casual Calling Coalition at 13.

nothing in the forbearance provision limits the ability of the telecommunications providers to continue to abide by the forbore regulation on a voluntary basis.

B. *Mandatory Forbearance Is Not In the Public Interest*

Contrary to the view of some commenters that tariff filings interfere with the functioning of a competitive market, delay competitive responses to pricing and service initiatives and result in price coordination, the Coalition submits that tariff filings have proven essential in the development of competition in the long distance market. As Ursus Telecom notes, the FCC has stated on previous occasions that permissive tariffing has proved to be successful over the years.⁶ Even U.S. West, who generally supports the forbearance proposal, encourages the Commission to realize that tariff filings are not “*per se* inconsistent with competition.”⁷ Specifically, U.S. West acknowledges, as do most other commenters, that tariffs are beneficial to carriers and consumers because they permit general offerings to the public, detailed descriptions of the services offered, and a method of clarifying the legal rights of the parties.⁸ As many other commenters submit, tariffs are also essential to the proper functioning of the Section 208 complaint process and the Commission’s ability to monitor the industry on informal basis.⁹

The Coalition cautions the Commission against the self-serving arguments set forth by proponents of mandatory forbearance, particularly the Bell Operating Companies (“BOCs”), who

⁶ See Comments of Ursus Telecom Corporation at 4.

⁷ Comments of U.S. West at 3.

⁸ See *id.* at 5.

⁹ See *e.g.*, Comments of General Services Administration (“GSA”) at 5; Telecommunications Management Information Systems Coalition (“TMISC”) at 7; WinStar Communications at 8.

are most likely to benefit from the elimination of tariff filings. As evidenced in their comments, most BOCs favor mandatory forbearance provided that the Commission extends the policy to them as well.¹⁰ The Coalition urges the Commission to recognize that mandatory detariffing would present BOCs with the opportunity to utilize advantages in the local exchange market to support their new long distance service offerings. As a preventive measure, tariffs are needed more than ever to provide the Commission with the ability to monitor rate changes, particularly rate changes that may signal cross-subsidization by local exchange carriers.

Contrary to the arguments set forth by proponents of mandatory detariffing, tariff filings do not result in price collusion. As indicated in numerous comments, the Commission simply overstates the relationship between tariffs and any tacit price collusion in the long distance market.¹¹ Additionally, as GCI argues, elimination of the tariff filing requirement will not affect the ability of carriers, particularly the larger IXC's, to ascertain the existing prices of their competitors.¹² The only parties that are adversely affected by this policy are consumers and small IXC's, who lack the resources to adequately survey the long distance market.

As the Coalition noted in its initial comments, price collusion has generally only been a real concern where it involved advance notice of future prices.¹³ The Commission's current practice of accepting tariffs on one day's notice substantially minimizes the effects of price

¹⁰ See Comments of BellSouth at 18; NYNEX at 4-5; SBC Communications, Inc. at 6; US West at 3.

¹¹ See e.g., Comments of America's Carriers Telecommunications Association at ii; Pacific Telesis at 4, 10.

¹² See Comments of GCI at 4.

¹³ See Comments of Coalition at 7.

signaling. Moreover, consistent with the Coalition's proposal, several parties suggest that the Commission could institute a new rule prohibiting the filing of tariffs more than one business day before their effective date (or could even require same-day filing) to further limit the opportunities for price collusion.¹⁴

III. FORBEARANCE SHOULD NOT APPLY TO CASUAL CALLING SERVICES

The Coalition reaffirms its belief that the Commission should either exempt casual calling service providers from the detariffing decision altogether or, at the very least, implement permissive tariffing whereby casual calling service providers may file tariffs with the Commission on a voluntary basis. As noted by several commenters including LDDS WorldCom, Pacific Telesis, American Telegram Corporation, and Sprint, detariffing would make it harder for "casual callers" to have simple, easy, and inexpensive access to long distance service.¹⁵

Critical to the success of casual calling is public access to information regarding service offerings and carrier charges contained in tariffs. Casual calling service providers utilize this data to simplify and disseminate rate information for residential and business customers. Detariffing would force casual service providers to execute contracts with every customer, thereby eliminating the most unique--and, for the consumer, the most convenient--aspect of

¹⁴ See Comments of GTE Service Corporation at 8; Market Dynamics at 17; Ohio Consumer's Council at 5.

¹⁵ See Comments of American Telegram Corporation at 2; LDDS WorldCom at 5; Pacific Telesis at 6; Sprint Communications at 12-13.

casual calling. The Coalition believes that mandatory detariffing not only penalizes the carriers that provide casual calling services, but threatens to undermine the success of the industry.

IV. THE COMMISSION SHOULD CONSIDER ALTERNATIVE APPROACHES INTRODUCED BY COMMENTING PARTIES

Finally, the Coalition strongly encourages the Commission to consider alternative approaches to remedy what it perceives as shortcomings resulting from tariff filings. As suggested by several parties, the Commission could institute various mechanisms that would effectively eliminate concerns regarding price collusion and abuse of the filed rate doctrine. For example, the Commission could adopt the proposal submitted by the TRA that would relax tariff requirements for all but the largest IXCs, allowing small and mid-sized carriers to specify maximum or reasonable ranges of rates with revisions on one day's notice.¹⁶ Or, the Commission could follow ACTA's recommendation and allow permissive tariffing for carriers with less than 5% of the marketshare, while maintaining the tariff requirement for carriers with 5% or greater of the marketshare.¹⁷ Similarly, the Commission could adopt the proposal of Market Dynamics which would require all carriers with total revenues above a certain level (*i.e.*, \$100 million, \$500 million or \$1 billion) to file complete tariffs, including rates and terms and

¹⁶ See Comments of TRA at 18. Specifically, TRA recommends that the Commission retain mandatory tariffing for IXCs which generate more than 5% of the aggregate domestic revenues as well as for carriers affiliated with incumbent LECs. Additionally, TRA suggests that the Commission require 14 days' notice before tariff changes become effective to permit adequate time for parties to submit responses to the proposed changes.

¹⁷ See Comments of ACTA at 14.

conditions of service.¹⁸ Should the Commission opt to preclude tariff filings altogether, it could establish a clearinghouse for the deposit of pricing information and other tariff-specific information.¹⁹ Finally, to prevent carriers from taking advantage of the filed rate doctrine, the Commission could require carriers when filing tariffs to indicate in their transmittal whether the tariff proposal would alter in any way the terms of an existing contract.²⁰

V. CONCLUSION

For the foregoing reasons, the Coalition urges the Commission to strongly reconsider its tentative conclusion to forbear from the tariff filing requirement and maintain the current tariff filing system. As demonstrated above, tariffs provide enormous benefits to both carriers and consumers including dissemination of information regarding service offerings and rates, increased vendor selection, and clarification of the legal rights of all interested parties. At a minimum, the Commission should adhere to the suggestions of the majority of commenters and adopt a policy of permissive tariffing.

¹⁸ See Comments of Market Dynamics at 23.

¹⁹ See *e.g.*, Moscom Corporation Letter to the FCC Re: Policy and Rules Concerning the Interstate Interexchange Marketplace; Comments of the Telecommunications Management Information Systems Coalition at 10-11.

²⁰ See Joint Comments of Capital Cities/ABC, NBC, CBS, and the Turner Broadcasting System at 6-7.

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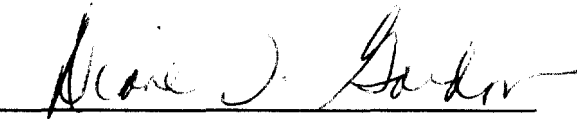
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Dated: May 24, 1996

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I hereby certify that on this 24th day of May 1996, copies of the foregoing REPLY
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